

**To:** "Jewell, Michael S SPK" [Michael.S.Jewell@usace.army.mil];  
ichael.g.nepstad@usace.army.mil[]  
**Cc:** Karen Schwinn/R9/USEPA/US@EPA; Tom Hagler/R9/USEPA/US@EPA; CN=Jason  
Brush/OU=R9/O=USEPA/C=US@EPA; CN=Paul  
Jones/OU=R9/O=USEPA/C=US@EPA; CN=Stephanie  
Skophammer/OU=R9/O=USEPA/C=US@EPA[]; om Hagler/R9/USEPA/US@EPA; CN=Jason  
Brush/OU=R9/O=USEPA/C=US@EPA; CN=Paul  
Jones/OU=R9/O=USEPA/C=US@EPA; CN=Stephanie  
Skophammer/OU=R9/O=USEPA/C=US@EPA[]; N=Jason  
Brush/OU=R9/O=USEPA/C=US@EPA; CN=Paul  
Jones/OU=R9/O=USEPA/C=US@EPA; CN=Stephanie  
Skophammer/OU=R9/O=USEPA/C=US@EPA[]; N=Paul  
Jones/OU=R9/O=USEPA/C=US@EPA; CN=Stephanie  
Skophammer/OU=R9/O=USEPA/C=US@EPA[]; N=Stephanie  
Skophammer/OU=R9/O=USEPA/C=US@EPA[]  
**From:** CN=Erin Foresman/OU=R9/O=USEPA/C=US  
**Sent:** Thur 10/25/2012 7:54:28 PM  
**Subject:** Re: BDCP: Overall Project Purpose for CM1 (UNCLASSIFIED)  
[michael.s.jewell@usace.army.mil](mailto:michael.s.jewell@usace.army.mil)  
<http://per2.nwp.usace.army.mil/survey.html>  
<http://www.spk.usace.army.mil/Missions/Regulatory.aspx>  
[www.facebook.com/sacramentodistrict](http://www.facebook.com/sacramentodistrict)  
[www.youtube.com/sacramentodistrict](http://www.youtube.com/sacramentodistrict)  
[www.twitter.com/USACESacramento](http://www.twitter.com/USACESacramento)

Hi Michael,

Thanks again for calling to discuss BDCP and sharing your understanding of the NEPA and CWA 404 processes and your position regarding the overall project purpose (OPP) statement for the Delta Conveyance Project.

It is informative to see confirmation that DWR has chosen to separate the BDCP EIS (which will support decisions by USFWS and NMFS under Section 10 of the Endangered Species Act) from Army Corps of Engineers decisions under CWA Section 404. This information is helpful. We expect this means that the Corps will be doing their own NEPA document for the Delta Conveyance project consistent with the magnitude of project impacts. As you know, EPA has supported the concept of meshing the NEPA and 404 processes as this can gain efficiencies and save the applicant time, but this is solely at the discretion of the applicant.

We do not concur with DWR's proposed CWA Section 404 overall project purpose statement for BDCP Conservation Measure 1 (CM1), as written in your message below. The incoming message indicates that the Corps is ready to concur, conditioned upon CM1 being identified as the alternative most likely to yield the least environmentally damaging practicable alternative in the Final EIS.

We've said a number of times that the OPP should simply be the first phrase in DWR's proposed paragraph:

"The overall purpose of the project is to construct and operate modifications and improvements to the SWP facilities in the Delta."

The above OPP is consistent with Corps regulation and guidance.

We are confused as to why debate over this relatively simple step in the process has consumed so much time and have four points of concern regarding the proposed OPP:

First, using the term "CM1" in the OPP statement is defining the project purpose with the preferred alternative. This action precludes discussion of other alternatives and eliminates the utility of an alternatives analysis. There is a considerable amount of Corps guidance that specifically states the project purpose statement should not be so specific as to eliminate otherwise practicable alternatives that are not the preferred project. There are recent examples from the tiered California High Speed Rail project and other highway projects that follow the guidance and do not include language in the overall project purpose statement that precludes consideration of otherwise practicable alternatives.

Second, the definition of CM1 is subject to change and has changed substantially in the last twelve months. Concurring on the overall project purpose statement for CM1 may mean something today and something different tomorrow. I am not sure you are aware of this, but DWR is still working on the definition of CM1 including a description of water project operations. The fluid definition of CM1 needs to be addressed in order to understand what the Corps is concurring with at this time.

Third, based on what we have reviewed thus far, the BDCP EIS is not likely to include sufficient information to make a decision about which of the Delta Conveyance alternatives is most likely to yield the LEDPA. As described in your email (below), DWR is not attempting to merge information and analyses relevant to CWA Section 404 into the BDCP EIS.

Lastly, we are concerned that Corps concurrence on this OPP may have the appearance of being pre-decisional. Corps' concurrence presumes that CM1 will be identified as the Delta Conveyance alternative most likely to yield the LEDPA without information on which to base that decision. The Draft and Final Environmental Impact Statements are not complete and EPA is unaware of information or analyses that suggest CM1 may yield the LEDPA. It would be difficult to have these analyses completed as the project operations to become part of CM1 are not yet identified. The language of the proposed OPP statement excludes other infrastructure and water project operations alternatives considered for new Delta Conveyance at the programmatic level in the BDCP administrative draft EIS. Concurring on DWR's proposed OPP statement is identifying CM1, infrastructure and operations, as the alternative most likely to yield the LEDPA for new Delta Conveyance without information to support this choice.

We remain open to talking with you if you are interested trying to reach agreement on our differing perspectives. It's unfortunate that today's coordination meetings were cancelled. I understand that we may agree to disagree at this point. Should the Corps proceed with its proposed concurrence now, we anticipate submitting our concerns to the interested parties in our own letter. I'll share a draft copy of that letter with you before we send it out.

\*\*\*\*\*

Erin Foresman  
Environmental Scientist & Policy Coordinator,  
US EPA Region 9 C/O National Marine Fisheries Service  
650 Capitol Mall Suite 5-100, Sacramento, CA 95814  
Phone: (916) 930 3722

<http://www.epa.gov/sfbaydelta>

I work a part time schedule (M 7:30a - 4:00p, T - F 7:30 - 2:00p)

From: "Jewell, Michael S SPK" <Michael.S.Jewell@usace.army.mil>  
To: Erin Foresman/R9/USEPA/US@EPA,  
Cc: "Nepstad, Michael G SPK" <Michael.G.Nepstad@usace.army.mil>

Date: 10/23/2012 03:40 PM  
Subject: BDCP: Overall Project Purpose for CM1 (UNCLASSIFIED)

Classification: UNCLASSIFIED  
Caveats: NONE

Erin:

Thanks for talking with me yesterday. As I explained, DWR will take a "tiered" approach to evaluating alternatives for CM1. The EIS will analyze a reasonable range of NEPA alternatives at a fairly broad level (akin to evaluating different corridors for a highway project). The EIS will not include a 404 overall project purpose statement for CM1 nor will it attempt to "merge" NEPA/404. We will however stay engaged and communicate our perspective on the alternatives, as well as other concerns. When the FEIS is issued, DWR will chose a NEPA alternative that meets their needs and, in their opinion, has the least environmental impact. Assuming we concur the selected alternative would have the fewest impacts on the aquatic environment (considering all environmental factors), the Corps would send a letter (or otherwise document) at that time indicating we agree the selected "tier 1" alternative for CM1 is likely to yield the LEDPA.

After the BDCP has been approved by USFWS and NMFS, DWR would apply for a permit from the Corps to construct CM1. The application would include the overall project purpose statement in addition to other materials required for a complete permit application. During the review process, the Corps would complete a 404(b)(1) analysis, limiting the evaluation of practicable alternatives to those within the footprint of the NEPA alternative selected in the first tier (akin to evaluating different alignments within the selected corridor for a highway project). The Corps will be looking for maximum avoidance and minimization during the review, ultimately arriving at a LEDPA in our permit decision document for CM1.

At this time, based on the above, we are comfortable agreeing to the following language for the overall project purpose statement for CM1:

The overall purpose of the project is to construct and operate modifications and improvements to the State Water Project (SWP) facilities in the Delta, as set forth in the Water Operations and Conveyance Conservation Measure 1 component of the APPROVED Bay Delta Conservation Plan. The project includes the construction of new diversion facilities in the north Delta, the construction of new facilities to convey water from the new diversion facilities to the existing SWP water export facilities, and modifications to the operations of SWP. The project would align SWP water project operations in the Delta to better reflect seasonal flow patterns, reduce the usage of the existing SWP diversion facilities in the south Delta, and protect fish with state of the art fish screens.

"Approved" BDCP being the operable (and only changed) phrase. We are planning to send a letter by Friday to DWR responding to their July 27 letter stating we concur with the above, provided it is not included in the EIS (only with the permit application) and we have agreed the alternative selected in the first tier is likely to yield the LEDPA. In the letter, we will also describe our understanding of the tiered approach for evaluating alternatives and acknowledge that we may need to revisit the OPP if things change and/or we don't agree with the alternative selected in the first tier.

Thanks. I hope this is helpful. Look forward to hearing back from you soon.

Michael S Jewell  
Chief, Regulatory Division  
US Army Corps of Engineers, Sacramento District  
1325 J Street, Room 1350  
Sacramento, CA 95814

O:(916) 557-6605 F:(916) 557-7803  
michael.s.jewell@usace.army.mil

\* Customer service hours are 9am to 3pm in all seven of our regulatory offices.

\* We want your feedback! <http://per2.nwp.usace.army.mil/survey.html>

\* Need information on the Regulatory Program? <http://www.spk.usace.army.mil/Missions/Regulatory.aspx>

Facebook: [www.facebook.com/sacramentodistrict](http://www.facebook.com/sacramentodistrict)

YouTube: [www.youtube.com/sacramentodistrict](http://www.youtube.com/sacramentodistrict)

Twitter: [www.twitter.com/USACESacramento](http://www.twitter.com/USACESacramento)

BUILDING STRONG

Classification: UNCLASSIFIED

Caveats: NONE